

INDIANA DEPARTMENT OF STATE REVENUE

REVENUE RULING #2003-01 ST

June 27, 2003

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Application of Sales/Use Tax to Sales of Not-For-Profit Organizations

Authority: IC 6-2.5-5-26b, Rule 45 IAC 2.2-5-58

The taxpayer requests the Department to rule whether or not the sales of the taxpayer are subject to sales/use tax.

STATEMENT OF FACTS

The taxpayer is a not-for-profit organization that provides a benefit to its members through the services it offers. The taxpayer is affiliated with a national not-for-profit organization. The mission of the taxpayer is to prepare young people to make ethical and moral choices (2002 Official Retail Catalog). The chief function of the taxpayer's organization is education (2002 Official Retail Catalog).

The taxpayer operates five stores in Indiana. The taxpayer states that the stores are not operated as free-market businesses. The taxpayer states that for example, one of the stores is located in the taxpayer's headquarters which is situated in a predominately business office setting. Moreover, the store maintains traditional office hours (8:30 a.m. – 6:00 p.m. M-F, 9:00 a.m. – 3:00 p.m. Sat.) and does not participate in any advertising or marketing campaigns.

Each store sells various items that can be classified into five broad categories:

1. Member and Leader Necessities – uniforms, uniform insignia and accessories such as badges and neckerchiefs, flags, and handbooks, guidebooks, pamphlets and program guides (taxpayer books) exclusively marketed by the taxpayer.

Crafts –

- a. Taxpayer kits: kits exclusively marketed by the taxpayer such as Pinewood Derby Car kit; and
 - b. General craft kits: birdhouse kits, acrylic paint sets and other general craft items and kits that are not exclusively marketed by the taxpayer, but are used by members and leaders in completing requirements for various taxpayer badges and/or other skill ranks.
2. Awards – medals, trophies, plaques and sculptures specifically designed for taxpayer for recognition of members and their leaders.
3. Custom Design: awards, name plates and articles of clothing with an embroidered taxpayer design or logo intended to recognize individuals who further the taxpayer's mission or who participate in a taxpayer event e.g. summer camp, day camp.
4. Camping:
 - a. Taxpayer camping items: camping items exclusively marketed by the taxpayer such as taxpayer wall tents (used by members and leaders participating in taxpayer summer camp) and the taxpayer official camping gear which includes items such as taxpayer book bag, belt pack and canteen (used by members and leaders participating in day camp or resident camp); and
 - b. General camping items: tents, packs, sleeping bags, duffel bags and various camping utensils and general camping items that are not exclusively marketed by the taxpayer, but are purchased and used by members and leaders.

DISCUSSION

IC 6-2.5-5-26b (a) & (b) state:

- (a) Sales of tangible personal property are exempt from the state gross retail tax, if:
 - (1) the seller is an organization that is described in section 21(b)(1) of this chapter;
 - (2) the organization makes the sale to make money to carry on a not-for-profit purpose; and
 - (3) the organization does not make those sales during more than thirty (30) days in a calendar year.
- (b) Sales of tangible personal property are exempt from the state gross retail tax, if:

1. the seller is an organization described in section 21(b) of this chapter;
2. the seller is not operated predominantly for social purposes;
3. the property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization's members; and
4. the property sold is not designed or intended for use in carrying on a private or proprietary business.

Rule 45 IAC 2.2-5-58, interpreting IC 6-2.5-5-26b, provides in part:

- (a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designated and intended primarily for the educational, cultural or religious purposes of such qualified not-for-profit organization and not used in carrying out a private or proprietary business.
- (b) The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:
 - (1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and
 - (2) The organization is not carrying on a private or proprietary business with respect to such sales.
- (c) Furthering the educational, cultural or religious purpose. The primary purpose of the property sold must be to further the educational, cultural or religious purpose of the qualified not-for-profit organization.

Firstly, it should be noted that the "thirty (30) day sales rule" exemption from collecting sales/use tax contained in IC 6-2.5-5-26b (a) is not applicable to the taxpayer as the taxpayer makes sales for more than thirty (30) days in a calendar year.

Secondly, it is clear from the above statute and regulation that for the taxpayer's sales of tangible personal property to be exempt from sales/use tax the sales must be both made in furtherance of the educational purpose of the taxpayer's organization and not sold in the "carrying on" of a private or proprietary business.

Here, all the tangible personal property sold by the taxpayer, i.e., member and leader necessities, taxpayer craft kits and general craft kits, awards, custom design items, and taxpayer camping items and general carrying items, is used for educational purposes, hence, consistent with the taxpayer's purpose of organization. Further, all items are predominantly sold to members, leaders and others involved with the taxpayer's organization, therefore, the taxpayer is not carrying on a private or proprietary business. This being the case, the taxpayer's sale of the above listed items is not subject to sales/use tax.

RULING

The Department rules that member and leader necessities, taxpayer craft kits and general craft kits, awards, custom design items, and taxpayer camping items and general camping items sold by the taxpayer are not subject to sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection

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